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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,352	02/06/2004	Gerd Scharminghausen	ESN-45	5252

26875 7590 06/23/2006

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EXAMINER
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DEL SOLE, JOSEPH S

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/774,352

Applicant(s)

SCHARNINGHAUSEN ET AL.

Examiner

Joseph S. Del Sole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/04 and 6/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because a) the lines, numbers and letters are not uniform, clean and well defined (of a generally poor quality) in each of the 5 figures (37 CFR 1.84(l)). Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-10 and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kato (4,503,006).

Kato teaches a portioning device (Fig 1) having a forming space (Fig 1, #6) adapted to be filled by a mass of the bulk material, the forming space delimited by a wall for forming the mass (Fig 1); an output opening (Fig 1, #10); and a cutting device (Fig 1, #12) for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter (Fig 1, #12) that is at least partially introducible into the forming space, and each of the plurality of mass portions being

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output through the output openings; the cutting body is introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space; the forming space has a filling opening through which the mass can be filled into the forming space (Fig 1); the forming space has a geometry matched to the form of an end product (Fig 1); the forming space is defined inside a tube through which the mass is axially transportable (Fig 1); the wall delimiting the forming space has a slit into which the cutter can be introduced (Fig 1); the slit extends far enough so that the cutter can cut completely through the cross section of the forming space (Fig 10); the cutter is introducible into the forming space at a place such that each of the plurality of mass portions formed, when the cutter is introduced, is supported by at least part of the wall (Fig 1); the slit is spaced at a distance from an output opening of the forming space such that a section of the forming space corresponds at least approximately to the size of each of the plurality of mass portions (Fig 1); the wall delimiting the forming space is substantially cylindrical and the slit almost completely penetrates the wall (Fig 1); and a means for fastening cutting device as an attachment to a device for transporting and/or mincing bulk material (Fig 1).

4. Claims 1-5, 12-13 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Covington et al (4,112,545).

Covington teaches a portioning device (Fig 5) having a forming space (Fig 5, #38 and 58) adapted to be filled by a mass of the bulk material, the forming space delimited by a wall for forming the mass (Fig 5); an output opening (Fig 5, approximate to #38); and a cutting device (Fig 5, #s 44) for portioning the mass filled into the forming space

into a plurality of mass portions, the cutting device having a cutter (Fig 6, #44a) that is at least partially introducible into the forming space, and each of the plurality of mass portions being output through the output openings; the cutting body is introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space; the forming space has a filling opening through which the mass can be filled into the forming space (Fig 5); the forming space has a geometry matched to the form of an end product (Fig 5); the forming space is defined inside a tube through which the mass is axially transportable (Fig 5); the cutter is a two-bladed, rotatable cutting knife (Fig 5); a means for fastening cutting device as an attachment to a device for transporting and/or mincing bulk material (Fig 5 and col 4, lines 35-45); means for transporting the mass, the means of transport being discontinuously operable, and the timing of the discontinuous operation cooperating with the introductory motion of the cutter into the forming space for portioning the mass into the plurality of mass portions (col 4, lines 25-65); the geometry has a cross-section that is substantially rotationally symmetrical and oval (Fig 5).

5. Claims 1-5, 11-13 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilson et al (2,497,724).

Gilson teaches a portioning device (Fig 1) having a forming space (Fig 1, #20) adapted to be filled by a mass of the bulk material, the forming space delimited by a wall for forming the mass (Fig 1); an output opening (Fig 1); and a cutting device (Fig 1, #45) for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter (Figs 3 and 4, #s 56-58) that is at least partially

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introducible into the forming space, and each of the plurality of mass portions being output through the output openings; the cutting body is introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space; the forming space has a filling opening through which the mass can be filled into the forming space (Fig 1); the forming space has a geometry matched to the form of an end product (Fig 1); the forming space is defined inside a tube through which the mass is axially transportable (Fig 1); the cutter is a two-bladed, rotatable cutting knife (Figs 3 and 4); and a means for fastening cutting device as an attachment to a device for transporting and/or mincing bulk material (Fig 1); and the geometry has a cross-section that is substantially rotationally symmetrical and oval (Fig 1).

6. Claims 1-9 and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Morikawa et al (5,289,764).

Morikawa teaches a portioning device (Fig 2) having a forming space (Fig 3, portions about #35) adapted to be filled by a mass of the bulk material, the forming space delimited by a wall for forming the mass (Fig 3); an output opening (Fig 3); and a cutting device (Fig 3, #38) for portioning the mass filled into the forming space into a plurality of mass portions, the cutting device having a cutter (Fig 3, #38) that is at least partially introducible into the forming space, and each of the plurality of mass portions being output through the output openings; the cutting body is introducible into the forming space in a direction that lies approximately perpendicular to the direction in which the mass is filled into the forming space; the forming space has a filling opening

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through which the mass can be filled into the forming space (Fig 3); the forming space has a geometry matched to the form of an end product (Fig 3); the forming space is defined inside a tube through which the mass is axially transportable (Fig 3); the wall delimiting the forming space has a slit into which the cutter can be introduced (Fig 3); the slit extends far enough so that the cutter can cut completely through the cross section of the forming space (Fig 3); the cutter is introducible into the forming space at a place such that each of the plurality of mass portions formed, when the cutter is introduced, is supported by at least part of the wall (Fig 3); the slit is spaced at a distance from an output opening of the forming space such that a section of the forming space corresponds at least approximately to the size of each of the plurality of mass portions (Fig 3); a means for fastening cutting device as an attachment to a device for transporting and/or mincing bulk material (Figs 3, 5 and 8); a smoothing belt (Fig 3 at #s 44 and 46) that can receive the plurality of mass portions, the smoothing belt cooperating with at least one shaping surface to aftershape each of the plurality of mass portions; and means for transporting the mass, the means of transport are discontinuously operable, and the timing of the discontinuous operation cooperating with the introductory motion of the cutter into the forming space for portioning the mass into the plurality of mass portions (Figs 3, 5 and 8).

#### ***References of Interest***

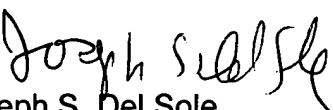
7. Morikawa et al (5,232,713) and McCarthy et al (3,994,658), are cited of interest to show the state of the art.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on M-F 8:30 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Joseph S. Del Sole  
6/21/06